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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,295	10/19/2001	Noam Fraenkel	MERCURY.140A2	1983

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EXAMINER

WON, MICHAEL YOUNG

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/057,295

Applicant(s)

FRAENKEL ET AL.

Examiner

Michael Y. Won

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/15/02, 9/30/02, 4/29/03, 5/13/03, 6/26/03, 3/3/04, 6/4/04, 9/21/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-29 have been examined and are pending with this action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. **Claim 13** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8, 11-16, 18-26, and 28-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Sweet et al. (US 6,519,714 B1).

**INDEPENDENT:**

As per **claim 1**, Sweet teaches a method of monitoring the operation of a deployed web site system, the method comprising: (a) monitoring response times of a web site system (see col.3, lines 33-50 and col.4, line 60-col.5, line 4) as seen from multiple geographic locations, including locations that are geographically remote from each other and from the web site system (see col.1, lines 55-62 and col.8, lines 42-45); (b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the web site system from a computer that is local to the web site system (see col.1, lines 18-21; col.2, lines 34-42; col.3, lines 14-18; and col.5, lines 8-12); and (c) displaying (see col.5, lines 5-8; col.8, lines 8-12; and col.10, lines 42-44) the response times and server resource utilization parameters as monitored in (a) and (b) over a selected time period as a function of time (see col.7, lines 28-31 & 41-44) to allow an operator to evaluate whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters (utility and see col.1, lines 14-18).

As per **claim 13**, Sweet further teaches a system for monitoring performance of a deployed transactional server, the system comprising: a first agent (see Fig.2: plural agents; and col.6, lines 39-44) configured to monitor a transactional server over a

network (see Fig.4A-4B), the first agent collecting performance data including response times of the transactional server (see col.3, lines 33-50 and col.4, line 60-col.5, line 4); a second agent (see Fig.2: plural agents; and col.6, lines 39-44) configured to monitor server resource utilization of the transactional server, the second agent collecting data on one or more server resource utilization parameters (see col.1, lines 18-21; col.2, lines 34-42; col.3, lines 14-18; and col.5, lines 8-12), wherein the second agent monitors server resource utilization substantially concurrent with monitoring of the transactional server by the first agent; and a report generating component configured to generate reports based at least on the data collected by the first and second agents, wherein at least one of the generated reports associates response times of the transactional server as monitored by the first agent with server resource utilization parameters as monitored by the second agent (see col.5, lines 5-8; col.8, lines 8-12; and col.10, lines 42-44).

As per **claim 20**, Sweet teaches a method for monitoring the performance of a transactional server, the method comprising: receiving performance data from a plurality of computers geographically distributed across a network (see col.1, lines 55-62 and col.8, lines 42-45), the plurality of computers executing transactions on a transactional server while monitoring associated response times (see col.3, lines 33-50 and col.4, line 60-col.5, line 4); receiving server resource utilization data from a computer that monitors server resource utilization of the transactional server during execution of the transactions by the plurality of computers(see col.1, lines 18-21; col.2, lines 34-42; col.3, lines 14-18; and col.5, lines 8-12); and displaying the performance data in

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association with corresponding server resource data (see col.5, lines 5-8; col.8, lines 8-12; and col.10, lines 42-44).

As per **claim 25**, Sweet teaches a method of monitoring the operation of a deployed transactional server, the method comprising: (a) monitoring response times of the transactional server (see col.3, lines 33-50 and col.4, line 60-col.5, line 4) as seen from multiple geographic locations, including locations that are geographically remote from each other and from the transactional server (see col.1, lines 55-62 and col.8, lines 42-45); (b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the transactional server (see col.1, lines 18-21; col.2, lines 34-42; col.3, lines 14-18; and col.5, lines 8-12); and (c) displaying data (see col.5, lines 5-8; col.8, lines 8-12; and col.10, lines 42-44) indicative of whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters over time (see col.3, lines 30-32 & 45-50).

**DEPENDENT:**

As per **claim 2**, Sweet further teaches wherein (a) comprises monitoring the response times from agent computers in at least some of the multiple geographic locations (see col.1, lines 55-62 and col.8, lines 42-45).

As per **claim 3**, Sweet further teaches wherein (a) comprises passively monitoring traffic resulting from actual web site users in at least some of the multiple geographic locations (see col.2, lines 38-42).

As per **claim 4**, Sweet further teaches wherein (a) comprises generating page requests from a data center, and sending the page requests to the web site system via Internet points of presence located in at least some of the multiple geographic locations (see col.4, line 60-col.5, line 4).

As per **claim 5**, Sweet further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a web server (see col.1, line 66-col.2, line 3 & lines 34-38).

As per **claim 6**, Sweet further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of an application server (see col.3, lines 3-8 and col.8, lines 30-33).

As per **claim 7**, Sweet further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a database server (see col.3, lines 3-8 and col.8, lines 30-37).

As per **claim 8**, Sweet further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a network device (see above: network servers are network devices).

As per **claim 11**, Sweet teaches of further comprising applying a statistical algorithm to a sequence of response time measurements resulting from (a) to automatically detect degradation in performance (inherent: see col.5, lines 5-8).

As per **claim 12**, Sweet teaches of further comprising processing server resource utilization measurements resulting from (b) to identify at least one server resource

parameter having a correlation with the degradation in performance (see col.1, lines 36-51 and col.2, lines 8-11).

As per **claim 14**, Sweet further teaches wherein the first agent is configured to monitor network hop delays (see col.14-30).

As per **claim 15**, Sweet further teaches wherein the first agent sends request messages to the transactional server to measure the response times (see col.4, line 60-col.5, line 4).

As per **claim 16**, Sweet further teaches wherein the first agent passively monitors traffic between client computers and the transactional server to measure the response times (see col.2, lines 38-42).

As per **claim 18**, Sweet further teaches wherein the second agent is configured to monitor server resource utilization of a database server (see claim 7 rejection above).

As per **claim 19**, Sweet teaches of further comprising an analysis component that automatically detects correlations between response times and server resource utilization parameters (see col.3, lines 30-32 & 45-50).

As per **claim 21**, Sweet further teaches wherein the performance data includes time stamps for associating the performance data and the server resource utilization data (see col.7, lines 28-31 & 41-44).

As per **claim 22**, Sweet further teaches wherein the server resource utilization data includes central process unit (CPU) utilization data associated with the transactional server (see col.3, lines 14-18).



As per **claim 23**, Sweet further teaches wherein the server resource utilization data includes memory allocation data (see col.8, lines 30-33).

As per **claim 24**, Sweet further teaches wherein the server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data (see col.3, lines 33-36).

As per **claim 26**, Sweet further teaches wherein (c) comprises displaying response time data and server resource utilization data resulting from (a) and (b), respectively, on a like time scale (see col.7, lines 28-31 & 41-44) to permit a human operator to determine whether the correlation exists.

As per **claim 28**, Sweet further teaches wherein (c) comprises analyzing response time data and server resource utilization data resulting from (a) and (b) with an automated analysis system that automatically detects correlations (see col.5, lines 12-18).

As per **claim 29**, Sweet further teaches wherein the transactional server is a web site system (see col.4, lines 60-66).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-10, 17, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. (US 6,519,714 B1) in view of Booman et al. (US 6,216,169 B1).

As per **claims 9 and 10**, Sweet does not explicitly teach wherein the network device is a router or a bridge, respectively. Booman teaches of a network device that a router or a bridge (see col.3, lines 54-59 and col.6, lines 11-14, respectively). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the teachings of Booman within the system of Sweet by implementing routers or bridges as the network device within the method of monitoring the operation of a deployed web site system because these network devices are known devices within all networks and Booman teaches that "these elements all related to computer performance data or network management data" (see col.3, lines 59-63).

As per **claims 17 and 27**, Sweet does not explicitly teach wherein the report generating component generates reports associating the response times with the server resource utilization parameters by displaying the response times and the server resource utilization parameters on a time-synchronized graph to permit a human operator to determine whether a correlation exists between the response times and the server resource utilization parameters. Booman teaches of displaying the response times and the server resource utilization parameters on a time-synchronized graph (see col.8, lines 51-66 and col.12, lines 37-39). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the teachings of

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Booman within the system of Sweet by implementing displaying the response times and the server resource utilization parameters on a time-synchronized graph within the method and system for monitoring performance of a deployed transactional server because graphs and charts are known to convey information to visually and quickly for comparing data and assessing results.

### ***Conclusion***

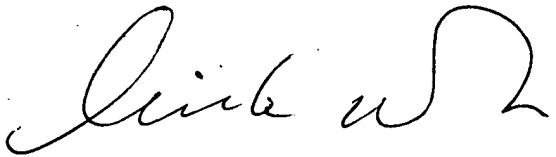
5. Claims 1-29 have been rejected and are pending with this action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Won

A handwritten signature in cursive script, appearing to read "Mike W2".

June 6, 2005

*Philip Tran*  
PHILIP TRAN (PSA)